

Central Intelligence Agency



Washington, D.C. 20505

86-0374

27 FEB 1986
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The Honorable George Bush
President of the Senate
Washington, DC 20510

Dear Mr. President:

Submitted herewith, pursuant to the provisions of 5 U.S.C. 552(d), is the report of the Central Intelligence Agency concerning its administration of the Freedom of Information Act (FOIA) during calendar year 1985.

This was a record year for the Agency in terms of our accomplishments in reducing our backlog of requests for information. Although the number of requests received was about the same as in 1984 (2,804 total, 1,440 of which were FOIA), we were able to complete the processing of 4,098 requests, reducing our backlog by 1,294 cases. The backlog at the end of CY 1985 stood at 1,661 cases, the lowest it has been in a decade. Contributing significantly to this reduction, especially during the latter half of the year, was the passage of the CIA Information Act and the subsequent designation of our operational files as exempt from search. The file designations were essentially completed by late spring of 1985, allowing us thereafter to complete a number of requests more rapidly where exempt files were involved, since the time consuming search and review of exempt records were eliminated.

Several other factors contributed to our success as well. The investment in equipment during 1984 to provide each case officer on the Coordinator's staff with a word processor paid huge dividends this year in speeding up our correspondence. The reorganization of the Information and Privacy Division to combine all support personnel into one branch gained tighter control over the internal processing, and a continuous review of open cases kept cases moving on track. Finally, the addition of another retired annuitant contractor to the Coordinator's staff, bringing the total to four, to complete the processing of the large, older cases resulted in a final response to over half of the pre-1980 open cases. More complete details of our production/workload statistics for CY 1985 are enclosed at Tab A.

The backlog of administrative appeals increased by 45 during 1985, bringing our year-end appeal workload to 188 cases, not as large as expected in view of the large number of initial cases closed this year. This increase, however, represents an appeal rate of only 1 percent of the 4,098 initial responses.

During 1985 our manpower input to FOIA/PA processing of 115.7 manyears was slightly higher than for 1984. The CIA Information Act passed in 1984 has relieved the Agency of the burden of reviewing exempt operational files, and, in compliance with our promise to Congress during the hearings on the Act, we have maintained our level of manpower input, concentrating on lowering the backlog of open cases and improving our response time. We expect that the Act will be of even more help during the coming years as our workload becomes more current. Nevertheless, FOIA/PA requests continue to represent a significant burden to the Agency in two respects. First of all, even though operational files are no longer subject to search and review, the review of documents located in other files and decisions as to what is releasable must still be made by the professional intelligence officers working on the area concerned. This means that they must be diverted from the primary mission of this agency to conduct the review. Secondly, even discounting our expenditure for space, equipment, and overtime payments, all of which continued high during 1985, the administrative burden remains as heavy as in past years. Since 1975 we estimate that the Agency has spent over \$32.2 million in personnel costs alone for processing information requests--\$18.2 million for FOIA. The provisions of the Act that permit the Agency to charge fees for record searches and duplication are inadequate for recovering even a reasonable part of the costs. The Agency has thus far collected a total of \$100,209 in fees. When compared with expenditures for administering just the FOIA, this continues to amount to a return of slightly over one-half cent on the dollar. Because of the number of fee waivers or fee reductions granted, the Agency was able to collect only \$10,546 in fees and advance deposits during CY 1985--about twice the amount collected in 1984, but closer to our collections in past years.

The passage of the CIA Information Act of 1984 has alleviated our main concerns about the effect of the FOIA on our intelligence collection effort, since our most sensitive files are no longer subject to search. Our requesters are beginning to realize a benefit from the Act, too, in terms of faster response times. Even though our response time has improved considerably, and we expect it to improve even more over the coming year, we will still be unable to comply with the statutory response time requirements imposed by the FOIA.

We are, nevertheless, encouraged by the improvement that has already been made in both our response time and in the reduction of our backlog of cases, and the Agency remains committed to further progress in these matters during the coming year.

Sincerely,

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Richard J. Kerr
Deputy Director
for
Administration

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FREEDOM OF INFORMATION ACT
ANNUAL REPORT TO THE CONGRESS FOR THE YEAR 1985

1. Total number of initial determinations not to comply with a request for records made under subsection 552(a): 1123

There were 784 other FOIA cases in which the requesters were neither given access to nor denied the records sought. None of these cases was regarded as a denial, however, inasmuch as the Agency was either prepared to act upon the request or there proved to be no records to act upon. Accordingly, these 784 have not been included in the 1123 figure provided in answer to question No. 1 above. In 231 instances, our searches uncovered no records relevant to the request. In 18 other cases, we found no CIA-originated records, but did locate in our files pertinent documents created by another agency, which were subsequently referred to the agency of origin for review and direct response to the requesters. There were 35 instances where the information requested was not related to the CIA's activities, and the requester was thus referred to the agency or agencies having cognizance over the records. In 4 cases, requesters appealed on the basis of our failure to respond within the statutory deadline; in another 10 cases, the requesters chose not to exercise their right to administrative appeal and went directly into litigation for the same reason. In each of these instances, therefore, the initial processing of the requests progressed into the Agency's appellate or litigation channels. Twenty-one requests were withdrawn by the requesters after processing had commenced, but before action on them could be completed. Finally, 465 cases were canceled by the Agency because of the failure of requesters to respond to letters asking for clarification, additional identifying information, notarized releases from third parties, fee payments, fee deposits, or written commitments that all reasonable search and/or copying fees would be paid, etc. In each of the latter cases, at least 90 days had elapsed without a reply from the requester before action was taken to discontinue processing.

2. Authority relied upon for each such determination:

(a) Exemptions in 552(b):

| <u>Exemption involved</u> | <u>Number of times (i.e., requests) invoked</u> |
|---------------------------|---|
| (b) (1) | 989 |
| (b) (2) | 4 |
| (b) (3) | 1023 |
| (b) (4) | 3 |
| (b) (5) | 22 |
| (b) (6) | 93 |
| (b) (7) | 34 |
| (b) (8) | 0 |
| (b) (9) | 0 |

(b) Statutes invoked pursuant to Exemption No. 3:

| <u>Statutory citation</u> | <u>Number of times (i.e., requests) invoked</u> |
|--|---|
| 50 U.S.C. 403 (d) (3) and/or 50 U.S.C. 403g | 1023 |

(c) Other authority: None3. Appeal Determinations:(a) Total number of administrative appeals from adverse initial decisions made pursuant to subsection (b) (6): 7

In eight other cases, requests which were initially processed under the provisions of the Privacy Act were processed under the Freedom of Information Act upon appeal, in accord with the wishes of the appellants. These were requests for access to personal records, which the CIA usually processes under the Privacy Act rather than the Freedom of Information Act.

(b) Number of appeals in which, upon review, request for information was granted in full: None(c) Number of appeals in which, upon review, request for information was denied in full: 50(d) Number of appeals in which, upon review, request was denied in part: 124. Authority relied upon for each such appeal determination:(a) Exemptions in 552(b):

| <u>Exemption invoked</u> | <u>Number of times (i.e., appeals) invoked</u> |
|--------------------------|--|
| (b) (1) | 56 |
| (b) (2) | 0 |
| (b) (3) | 60 |
| (b) (4) | 0 |
| (b) (5) | 5 |
| (b) (6) | 11 |
| (b) (7) | 1 |
| (b) (8) | 0 |
| (b) (9) | 0 |

(b) Statutes invoked pursuant to Exemption No. 3:

| <u>Statutory citation</u> | <u>Number of times (i.e. appeals) invoked</u> |
|--|---|
| 50 U.S.C. 403(d)(3) and/or 50 U.S.C. 403g | 60 |

5. Names and titles of those persons who, on appeal, were responsible for the denial in whole or in part of records requested and the number of instances or participation of each:

| <u>Name</u> | <u>Title</u> | <u>No. of instances of participation</u> |
|---------------------|--|--|
| Fitzwater, Harry E. | Deputy Director for Administration | 5 |
| Gates, Robert M. | Deputy Director for Intelligence | 5 |
| Stein, John H. | Inspector General | 4 |
| George, Clair E. | Deputy Director for Operations | 53 |
| Hineman, Richard E. | Deputy Director for Science and Technology | 1 |

6. Provide a copy of each court opinion or order giving rise to a proceeding under subsection (a)(4)(F), etc.: None

7. Provide an up-to-date copy of all rules or regulations issued pursuant to or in implementation of the Freedom of Information Act (5 U.S.C. 552):

Handbook HHB-70-1 submitted with the 1983 report is still valid.

8. Provide separately a copy of the fee schedule adopted and the total dollar amount of fees collected for making records available:

See Tab B for a copy of the fee schedule.

The total amount collected and transmitted for deposit in the U.S. Treasury during 1985 was \$10,546.

9. (a) Availability of records:

As the CIA does not promulgate materials as described in 5 U.S.C. 552(a)(2)(A)-(C), no new categories have been published.

In the case of each request made pursuant to the Freedom of Information Act, all reasonably segregable portions of records are released.

(b) Costs:

A total of 209,260 actual man-hours of labor was devoted during calendar year 1985 to the processing of Freedom of Information Act, Privacy Act, and mandatory classification review requests, appeals, and litigations. Taking into account leave and holidays, this would equate to approximately 115.7 full-time personnel. We estimate the average grade for professional employees at GS-12/7, and for non-professional employees GS-07/6. The funds expended during calendar year 1985 on personnel salaries, if overtime payments are ignored, would thus amount to \$3.81 million. If fringe benefits such as retirement and hospitalization are factored in as amounting to 10 percent of the salaries, the total personnel costs come to \$4.2 million. Of this total, approximately \$2.6 million can be attributed to the Freedom of Information Act.

(c) Compliance with time limitations for Agency determinations:

(I) Provide the total number of instances in which it was necessary to seek a 10-day extension of time: None

The Agency's processing backlogs have been such that in almost all instances the deadlines for responding to requests and appeals expired prior to our actually working on them. We were seldom in a position, for that reason, to assert that any of the three conditions upon which an extension must be based existed. We have, accordingly, explained the problem to requesters and appellants and apprised them of their rights under the law.

(II) Provide the total number of instances in which court appeals were taken on the basis of exhaustion of administrative procedures because the Agency was unable to comply with the request within the applicable time limits: 8

Of these, six actions were brought under the FOIA and two were brought under both the FOIA and PA.

(III) Provide the total number of instances in which a court allowed additional time upon a showing of exceptional circumstances, together with a copy of each court opinion or order containing such an extension of time: 3

Copies of the pertinent court orders are attached at Tab C. No written order was issued by the court in Southam News v. INS, et al., (Civil Action No. 85-2721). Additional time was granted pursuant to an oral agreement at status call.

(d) Internal Memoranda: None

Production/Workload Statistics

| | <u>FOIA</u> | <u>PA</u> | <u>EO*</u> | <u>TOTALS</u> | <u>%</u> |
|---------------------------------|-------------|-------------|------------|---------------|----------|
| Workload: | | | | | |
| Cases carried over from 1984 | 1762 | 947 | 246 | 2955 | (51.3) |
| Cases logged during 1985 | <u>1440</u> | <u>1095</u> | <u>269</u> | <u>2804</u> | (48.7) |
| Totals | <u>3202</u> | <u>2042</u> | <u>515</u> | <u>5759</u> | |
| Actions taken: | | | | | |
| Granted in full | 354 | 292 | 83 | 729 | (17.8) |
| Granted in part | 609 | 446 | 152 | 1207 | (29.5) |
| Denied in full | 514 | 208 | 65 | 787 | (19.2) |
| No records found | 231 | 519 | 0 | 750 | (18.3) |
| No CIA records found | 18 | 16 | 0 | 34 | (0.8) |
| Canceled | 465 | 46 | 1 | 512 | (12.5) |
| Withdrawn | 21 | 5 | 1 | 27 | (0.7) |
| Referred elsewhere | 35 | 1 | 2 | 38 | (0.9) |
| Early appeal | 4 | 0 | 0 | 4 | (0.1) |
| Early litigation | <u>10</u> | <u>0</u> | <u>0</u> | <u>10</u> | (0.2) |
| Totals: | <u>2261</u> | <u>1533</u> | <u>304</u> | <u>4098</u> | (100.0) |
| Cases carried over to 1986 | 941 | 509 | 211 | 1661 | |
| Change in workload | -821 | -438 | -35 | -1294 | (-43.8) |

*These are requests processed under the mandatory classification review provision of Executive Order 12356. Most of them are either referrals from the Presidential Libraries or declassification requests from other Federal agencies.

IPD/[] 24 February 1986

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